HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

WPMS No. 720 of 2006

Qurban Ali
Vs

The State of Uttaranchal and ors.

Approved for reporting

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~~Not approved for reporting~~

Date of decision 14.06.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 720 (MS) OF 2006

Qurban Ali,
S/o Ali Hasan,
R/o Moh. Qila, Manglore,
Pargana-Manglore, Tehsil-Roorkee,
District- Haridwar.

.....Petitioner.

Versus

1. The State of Uttaranchal, through Collector, Haridwar.
2. Secretary, Ministry of Finance, Dehradun.
3. Commission of Trade Tax, Dehradun.
4. Addl. District Judge/1st F.T.C., Roorkee, District-Roorkee.

.....Respondents.

Dated: 14.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri B.B. Sharma, Advocate for the petitioner and Standing Counsel for the respondents no. 1 to 4.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 6th February, 2006 passed by the respondent no. 4 A.D.J./First F.T.C. Roorkee, Haridwar (Annexure No. 3 to the writ petition). Further a writ of mandamus has been prayed by the petitioner commanding the respondent no. 4 A.D.J./F.T.C. First Roorkee, Distt. Haridwar to restore to O.S. No. 34/2003 Qurban Ali Vs. State of Uttaranchal and others.

Briefly stated, an original Suit No. 34 of 2003 Quarban Ali Vs. State of Uttaranchal & others was filed by the petitioner before the Civil Judge (Senior Division), Roorkee, District-Haridwar.

The said suit was dismissed by the Court of Addl. District Judge/First F.T.C. Roorkee, District Haridwar in absence of the petitioner on 04.07.2005. The petitioner filed a restoration application on 04.10.2005 on the ground that the petitioner was ill and the restoration application could not be filed well within time. In the restoration application, he has shown cause of his absence as under:-

"3. That the plaintiff applicant regularly remained resent in O.S. No. 34/2005 Qurban Ali Vs. State of Uttaranchal & others on almost all the above dates except on 4/7/05. On 4/7/205 applicant/plaintiff Quarban Ali instructed his Advocate Mr. Afzal Ahmad, Advocate, Saharanpur to appear in the above case in this Court and contest the case. On previous date also Afzal Ahmad, Advocate appeared in the above case.

4. That the Applicant/plaintiff Qurban Ali fell seriously ill therefore, the Applicant/plaintiff could not walk for two months. The Doctor Capt. R.P. Singh, MBBS (Lucknow) advised the applicant/plaintiff to confine to bed as he was ill. He issued a medical certified dated 1/7/2005 to this effect and a certified copy of the medical certificate issued by Dr. R.P. Singh, Regn. No. 28853, G.T. Road, Manglore, Distt. Hardwar dated 1/7/05 is annexed herewith and marked as Annexure-1 to this restoration application.

5. That after this, the applicant/plaintiff while going to the Doctor, met an accident as a result of which his left leg was fractured and the applicant plaintiff got his leg X-ray done by Kiron X-rays, 40, Civil Line, Roorkee on 29/8/05 on the advise of Doctors, marked as Annexure No. 2 herewith. The applicant then got himself treated at Shri J.N. Sinha Joint Govt. Hospital, Roorkee, Distt. Hardwar by Receipt No. 071791 dated 1-9-05 marked as Annexure No. 3 herewith.

8. That when the applicant/plaintiff appeared in the Court on 14/9/05 he came to know that the suit has been dismissed on 4/7/05. Therefore, the plaintiff/applicant procured the certified copy of the order dated 4/7/05 on 30/9/05. For the first time on 14/9/05, it came to the knowledge of the applicant/plaintiff took the certified copies and filing this restoration application.

9. That after 14/9/05 the applicant/plaintiff was advised to take rest again by the Doctors due to pain in his fractured leg on 12/10/2005 the plaster of the left leg of the applicant/plaintiff was removed by the Doctor. Therefore, the applicant/plaintiff is filing this restoration application now. In the interest of justice, it is necessary that if there is any delay in filing this restoration application that may be condoned, otherwise the applicant/plaintiff will suffer with irreparable loss and injury which can not be compensated in terms of money."

It is well established that any technicalities of law should not come in the way of dispensation of justice. The restoration application, therefore, cannot be rejected so as to deprive the party from arguing the matter on merits.

The apex Court in the case of Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and others 2002 Supreme Court & Full Bench Rent Case, Page 440 **has held as under:-**

"*The expression ' sufficient' cause' within the meaning of Section 5 of the Limitation Act, 1963 (hereinafter referred to as the 'Act') Order XXII, Rule 9 of the Code of Civil Procedure (hereinafter referred to as 'the Code') as well as similar other provisions and the ambit of exercise of powers there under have been subject matter of consideration before this Court on numerous occasions. In the case of State of West Bengal v.*

The Administrator, Howrah Municipality and others (1972) 1 Supreme Court Cases 366, while considering scope of the expression 'sufficient cause within the meaning of Section 5 of the Act, this Court laid down that the said expression should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party."

The need of society is that there should be justice oriented approach and the matter should not be rejected only on the ground of technicalities. The Apex Court has held in ***(2001) 8 SCC 151, M.S. Grewal Vs. Deep Chand Sood*** as under:-

" Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

In ***N Balakrishnan Vs. M. Krishnamurthy, 1998 S.C.F.B. and Rent Cases Pages 427,*** It has been held that law of limitation is founded in public policy on *'the maxim of interest reipublicae up sit finis litium' i.e. fal the general welfare,* it has been held as under:-

> *"The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause."*
>
> *"Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their*

remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer cause would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life spen must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time".

"It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation".

In view of the above, the order dated 06.02.2006 is quashed. The matter is sent back to the court of Addl. District Judge/1st F.T.C. Roorkee, District Haridwar, who shall decide the matter on merits in accordance with law. The petitioner has undertaken to cooperate with the hearing of the suit and shall not seek unnecessary adjournments.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

14.06.2006

Rathour